

AMENDED IN ASSEMBLY APRIL 30, 2012

AMENDED IN ASSEMBLY APRIL 10, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1937

Introduced by Assembly Member Silva

February 22, 2012

An act to amend Section 49076 of the Education Code, relating to pupil records.

LEGISLATIVE COUNSEL'S DIGEST

AB 1937, as amended, Silva. Pupil records: privacy rights.

Existing law prohibits a school district from permitting access to pupil records to a person without written parental consent or under judicial order, except to specified persons under certain circumstances.

Existing law authorizes school districts to release information from pupil records to specified persons, including appropriate persons in connection with an emergency if the knowledge of the information is necessary to protect the health or safety of a pupil or other persons; agencies or organizations in connection with the application of a pupil for, or receipt of, financial aid; county elections officials, for the purpose of identifying pupils eligible to register to vote; accrediting associations in order to carry out their accrediting functions; organizations conducting studies for, or on behalf of, educational agencies or institutions for the purpose of developing, validating, or administering predictive tests, administering student aid programs, or improving instruction; and officials and employees of private schools or school systems where the pupil is enrolled or intends to enroll, subject to specified rights of parents.

This bill would additionally allow a school district to release information from pupil records to a contractor, consultant, or other party to whom a local educational agency or institution has outsourced institutional services or functions ~~to be considered a school official for purposes of this provision~~ if he or she performs an institutional service or function for which the *local educational* agency or institution would otherwise use employees, he or she is under the direct control of the *local educational* agency or institution with respect to the use and maintenance of educational records, and he or she may use the information only for purposes for which the disclosure was made, and is prohibited from disclosing the information to any other party without the prior written consent of the parent or eligible pupil.

The bill would require a local educational agency or institution to use reasonable methods to ensure that the contractors, consultants, or other parties to whom information from pupil records is released under this bill obtain access only to those educational records in which they have a legitimate educational interest, as prescribed.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 49076 of the Education Code is amended
- 2 to read:
- 3 49076. (a) A school district is not authorized to permit access
- 4 to pupil records to a person without written parental consent or
- 5 under judicial order except that:
- 6 (1) Access to those particular records relevant to the legitimate
- 7 educational interests of the requester shall be permitted to the
- 8 following:
- 9 (A) School officials and employees of the district, members of
- 10 a school attendance review board appointed pursuant to Section
- 11 48321, and any volunteer aide, 18 years of age or older, who has
- 12 been investigated, selected, and trained by a school attendance
- 13 review board for the purpose of providing followup services to
- 14 pupils referred to the school attendance review board, provided
- 15 that the person has a legitimate educational interest to inspect a
- 16 record.
- 17 (B) Officials and employees of other public schools or school
- 18 systems, including local, county, or state correctional facilities

1 where educational programs leading to high school graduation are
2 provided or where the pupil intends to or is directed to enroll,
3 subject to the rights of parents as provided in Section 49068.

4 (C) Authorized representatives of the Comptroller General of
5 the United States, the Secretary of Education, and administrative
6 head of an education agency, state education officials, or their
7 respective designees, or the United States Office of Civil Rights,
8 where the information is necessary to audit or evaluate a state or
9 federally supported education program or pursuant to a federal or
10 state law, provided that except when collection of personally
11 identifiable information is specifically authorized by federal law,
12 data collected by those officials shall be protected in a manner that
13 will not permit the personal identification of pupils or their parents
14 by other than those officials, and personally identifiable data shall
15 be destroyed when no longer needed for the audit, evaluation, and
16 enforcement of federal legal requirements.

17 (D) Other state and local officials to the extent that information
18 is specifically required to be reported pursuant to state law adopted
19 prior to November 19, 1974.

20 (E) Parents of a pupil 18 years of age or older who is a
21 dependent as defined in Section 152 of Title 26 of the United States
22 Code.

23 (F) A pupil 16 years of age or older or having completed grade
24 10 who requests access.

25 (G) A district attorney who is participating in or conducting a
26 truancy mediation program pursuant to Section 48263.5, or Section
27 601.3 of the Welfare and Institutions Code, or participating in the
28 presentation of evidence in a truancy petition pursuant to Section
29 681 of the Welfare and Institutions Code.

30 (H) A prosecuting agency for consideration against a parent or
31 guardian for failure to comply with the Compulsory Education
32 Law (Chapter 2 (commencing with Section 48200)) or with
33 Compulsory Continuation Education (Chapter 3 (commencing
34 with Section 48400)).

35 (I) (i) A probation officer, district attorney, or counsel of record
36 for a minor for the purposes of conducting a criminal investigation
37 or an investigation in regards to declaring a person a ward of the
38 court or involving a violation of a condition of probation.

39 (ii) For purposes of this subparagraph, a probation officer,
40 district attorney, and counsel of record for a minor shall be deemed

1 to be local officials for purposes of Section 99.31(a)(5)(i) of Title
2 34 of the Code of Federal Regulations.

3 (iii) Pupil records obtained pursuant to this subparagraph shall
4 be subject to the evidentiary rules described in Section 701 of the
5 Welfare and Institutions Code.

6 (J) A judge or probation officer for the purpose of conducting
7 a truancy mediation program for a pupil, or for purposes of
8 presenting evidence in a truancy petition pursuant to Section 681
9 of the Welfare and Institutions Code. The judge or probation officer
10 shall certify in writing to the school district that the information
11 will be used only for truancy purposes. A school district releasing
12 pupil information to a judge or probation officer pursuant to this
13 subparagraph shall inform, or provide written notification to, the
14 parent or guardian of the pupil within 24 hours of the release of
15 the information.

16 (K) A county placing agency for the purpose of fulfilling the
17 requirements of the health and education summary required
18 pursuant to Section 16010 of the Welfare and Institutions Code or
19 for the purpose of fulfilling educational case management
20 responsibilities required by the juvenile court or by law and to
21 assist with the school transfer or enrollment of a pupil. School
22 districts, county offices of education, and county placing agencies
23 may develop cooperative agreements to facilitate confidential
24 access to and exchange of the pupil information by electronic mail,
25 facsimile, electronic format, or other secure means.

26 (2) School districts may release information from pupil records
27 to the following:

28 (A) Appropriate persons in connection with an emergency if
29 the knowledge of the information is necessary to protect the health
30 or safety of a pupil or other persons.

31 (B) Agencies or organizations in connection with the application
32 of a pupil for, or receipt of, financial aid. However, information
33 permitting the personal identification of a pupil or his or her parents
34 may be disclosed only as may be necessary for purposes as to
35 determine the eligibility of the pupil for financial aid, to determine
36 the amount of the financial aid, to determine the conditions which
37 will be imposed regarding the financial aid, or to enforce the terms
38 or conditions of the financial aid.

39 (C) The county elections official, for the purpose of identifying
40 pupils eligible to register to vote, and for conducting programs to

1 offer pupils an opportunity to register to vote. The information
2 shall not be used for any other purpose or given or transferred to
3 any other person or agency.

4 (D) Accrediting associations in order to carry out their
5 accrediting functions.

6 (E) Organizations conducting studies for, or on behalf of,
7 educational agencies or institutions for the purpose of developing,
8 validating, or administering predictive tests, administering student
9 aid programs, and improving instruction, if the studies are
10 conducted in a manner that will not permit the personal
11 identification of pupils or their parents by persons other than
12 representatives of the organizations and the information will be
13 destroyed when no longer needed for the purpose for which it is
14 obtained.

15 (F) Officials and employees of private schools or school systems
16 where the pupil is enrolled or intends to enroll, subject to the rights
17 of parents as provided in Section 49068. This information shall be
18 in addition to the pupil's permanent record transferred pursuant
19 to Section 49068.

20 (G) (i) A contractor, consultant, or other party to whom a local
21 educational agency or institution has outsourced institutional
22 services or functions, provided that this party complies with all of
23 the following:

24 (i)
25 (I) Performs an institutional service or function for which the
26 *local educational agency* or institution would otherwise use
27 employees.

28 (ii)
29 (II) Is under the direct control of the *local educational agency*
30 or institution with respect to the use and maintenance of educational
31 records.

32 (iii)
33 (III) Uses the information only for purposes for which the
34 disclosure was made, and does not disclose the information to any
35 other party without the prior written consent of the parent or
36 eligible pupil.

37 (H)
38 (ii) A local educational agency or institution shall use reasonable
39 methods to ensure that a contractor, consultant, or other party to
40 whom it has outsourced institutional services or functions pursuant

1 to ~~subparagraph (G)~~ *clause (i)* obtains access only to those
2 educational records in which that party has a legitimate educational
3 interest as set forth in subparagraph (A) of paragraph (1). A local
4 educational agency or institution that does not use physical or
5 technological access controls shall ensure that its administrative
6 policy for controlling access to *information from the* educational
7 records is effective and that it remains in compliance with the
8 legitimate educational interest requirement as set forth in
9 subparagraph (A) of paragraph (1).

10 ~~(H)~~

11 *(iii)* For an entity referenced in ~~subparagraph (G)~~ *clause (i)*,
12 access to any record of a pupil with exceptional needs, as defined
13 in Section 56026, shall be subject to Chapter 5 (commencing with
14 Section 56500) of Part 30.

15 (3) A person, persons, agency, or organization permitted access
16 to pupil records pursuant to this section shall not permit access to
17 any information obtained from those records by another person,
18 persons, agency, or organization, except for allowable exceptions
19 contained within the federal Family Educational Rights and Privacy
20 Act of 2001 (20 U.S.C. Sec. 1232g) and state law, without the
21 written consent of the pupil's parent. This paragraph does not
22 require prior parental consent when information obtained pursuant
23 to this section is shared with other persons within the educational
24 institution, agency, or organization obtaining access, so long as
25 those persons have a legitimate interest in the information.

26 (4) Notwithstanding any other ~~provision of~~ law, a school district,
27 including a county office of education or superintendent of schools,
28 may participate in an interagency data information system that
29 permits access to a computerized database system within and
30 between governmental agencies or districts as to information or
31 records that are nonprivileged, and where release is authorized as
32 to the requesting agency under state or federal law or regulation,
33 if each of the following requirements are met:

34 (A) Each agency and school district shall develop security
35 procedures or devices by which unauthorized personnel cannot
36 access data contained in the system.

37 (B) Each agency and school district shall develop procedures
38 or devices to secure privileged or confidential data from
39 unauthorized disclosure.

1 (C) Each school district shall comply with the access log
2 requirements of Section 49064.

3 (D) The right of access granted shall not include the right to
4 add, delete, or alter data without the written permission of the
5 agency holding the data.

6 (E) An agency or school district shall not make public or
7 otherwise release information on an individual contained in the
8 database where the information is protected from disclosure or
9 release as to the requesting agency by state or federal law or
10 regulation.

11 (b) The officials and authorities to whom pupil records are
12 disclosed pursuant to subdivision (f) of Section 48902 and
13 subparagraph (I) of paragraph (1) of subdivision (a) shall certify
14 in writing to the disclosing school district that the information
15 shall not be disclosed to another party, except as provided under
16 the federal Family Educational Rights and Privacy Act of 2001
17 (20 U.S.C. Sec. 1232g) and state law, without the prior written
18 consent of the parent of the pupil or the person identified as the
19 holder of the pupil's educational rights.

20 (c) (1) Any person or party who is not permitted access to pupil
21 records pursuant to subdivision (a) or (b) may request access to
22 pupil records as provided for in paragraph (2).

23 (2) A local educational agency or other person or party who has
24 received pupil records, or information from pupil records, may
25 release the records or information to a person or party identified
26 in paragraph (1) without the consent of the pupil's parent or
27 guardian pursuant to Section 99.31(b) of Title 34 of the Code of
28 Federal Regulations, if the records or information are deidentified,
29 which requires the removal of all personally identifiable
30 information, provided that the disclosing local educational agency
31 or other person or party has made a reasonable determination that
32 a pupil's identity is not personally identifiable, whether through
33 single or multiple releases, and has taken into account other
34 pertinent reasonably available information.